

and (f) of section 6 are classified to sections 13b and 9b of this title, respectively.

#### AMENDMENTS

1992—Pub. L. 102-546 amended section generally. Prior to amendment, section read as follows: "In determining the amount of the money penalty assessed under section 9 of this title, the Commission shall consider, in the case of a person whose primary business involves the use of the commodity futures market—the appropriateness of such penalty to the size of the business of the person charged, the extent of such person's ability to continue in business, and the gravity of the violation; and in the case of a person whose primary business does not involve the use of the commodity futures market—the appropriateness of such penalty to the net worth of the person charged, and the gravity of the violation. If the offending person upon whom such penalty is imposed, after the lapse of the period allowed for appeal or after the affirmation of such penalty, shall fail to pay such penalty the Commission shall refer the matter to the Attorney General who shall recover such penalty by action in the appropriate United States district court."

#### EFFECTIVE DATE

For effective date of section, see section 418 of Pub. L. 93-463, set out as an Effective Date of 1974 Amendment note under section 2 of this title.

#### § 9b. Rules prohibiting deceptive and other abusive telemarketing acts or practices

(1) Except as provided in paragraph (2), not later than six months after the effective date of rules promulgated by the Federal Trade Commission under section 6102(a) of title 15, the Commission shall promulgate, or require each registered futures association to promulgate, rules substantially similar to such rules to prohibit deceptive and other abusive telemarketing acts or practices by any person registered or exempt from registration under this chapter in connection with such person's business as a futures commission merchant, introducing broker, commodity trading advisor, commodity pool operator, leverage transaction merchant, floor broker, or floor trader, or a person associated with any such person.

(2) The Commission is not required to promulgate rules under paragraph (1) if it determines that—

(A) rules adopted by the Commission under this chapter provide protection from deceptive and abusive telemarketing by persons described under paragraph (1) substantially similar to that provided by rules promulgated by the Federal Trade Commission under section 6102(a) of title 15; or

(B) such a rule promulgated by the Commission is not necessary or appropriate in the public interest, or for the protection of customers in the futures and options markets, or would be inconsistent with the maintenance of fair and orderly markets.

If the Commission determines that an exception described in subparagraph (A) or (B) applies, the Commission shall publish in the Federal Register its determination with the reasons for it.

(Sept. 21, 1922, ch. 369, §6(f), as added Aug. 16, 1994, Pub. L. 103-297, §3(e)(2), 108 Stat. 1547.)

#### CODIFICATION

Section is comprised of subsec. (f) of section 6 of act Sept. 21, 1922. Subsecs. (a) and (b) of section 6 are classi-

fied to section 8 of this title. Subsec. (c) of section 6 is classified to sections 9 and 15 of this title. Subsecs. (d) and (e) of section 6 are classified to sections 13b and 9a of this title, respectively.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 15 section 6102.

#### § 10. Repealed. June 25, 1948, ch. 646, §39, 62 Stat. 992, eff. Sept. 1, 1948

Section, acts Sept. 21, 1922, ch. 369, §6(b), 42 Stat. 1001; June 15, 1936, ch. 545, §8(k), 49 Stat. 1499, related to review by Supreme Court on certiorari. See section 1254 of Title 28, Judiciary and Judicial Procedure.

#### § 10a. Cooperative associations and corporations, exclusion from board of trade; rules of board inapplicable to payment of compensation by association

(a) No board of trade which has been designated as a "contract market" shall exclude from membership in, and all privileges on, such board of trade, any association or corporation engaged in cash commodity business having adequate financial responsibility which is organized under the cooperative laws of any State, or which has been recognized as a cooperative association of producers by the United States Government or by any agency thereof, if such association or corporation complies and agrees to comply with such terms and conditions as are or may be imposed lawfully upon other members of such board, and as are or may be imposed lawfully upon a cooperative association of producers engaged in cash commodity business, unless such board of trade is authorized by the commission to exclude such association or corporation from membership and privileges after hearing held upon at least three days' notice subsequent to the filing of complaint by the board of trade: *Provided, however*, That if any such association or corporation shall fail to meet its obligations with any established clearing house or clearing agency of any contract market, such association or corporation shall be ipso facto debarred from further trading on such contract market, except such trading as may be necessary to close open trades and to discharge existing contracts in accordance with the rules of such contract market applicable in such cases. Such commission may prescribe that such association or corporation shall have and retain membership and privileges, with or without imposing conditions, or it may permit such board of trade immediately to bar such association or corporation from membership and privileges. Any order of said commission entered hereunder shall be reviewable by the court of appeals for the circuit in which such association or corporation, or such board of trade, has its principal place of business, on written petition either of such association or corporation, or of such board of trade, under the procedure provided in section 8(b) of this title, but such order shall not be stayed by the court pending review.

(b) No rule of any board of trade designated as a contract market shall forbid or be construed to forbid the payment of compensation on a commodity-unit basis, or otherwise, by any federated cooperative association to its regional member-associations for services rendered or to

be rendered in connection with any organization work, educational activity, or procurement of patronage, provided no part of any such compensation is returned to patrons (whether members or nonmembers) of such cooperative association, or of its regional or local member-associations, otherwise than as a dividend on capital stock or as a patronage dividend out of the net earnings or surplus of such federated cooperative association.

(Sept. 21, 1922, ch. 369, §6a, as added June 15, 1936, ch. 545, §9, 49 Stat. 1499; amended June 25, 1948, ch. 646, §32(a), 62 Stat. 991; May 24, 1949, ch. 139, §127, 63 Stat. 107; Oct. 28, 1992, Pub. L. 102-546, title II, §209(b)(4), title IV, §402(8), 106 Stat. 3607, 3625.)

#### AMENDMENTS

1992—Pub. L. 102-546 redesignated subsecs. (1) and (2) as (a) and (b), respectively, and in subsec. (a) substituted reference to section 8(b) of this title for reference to section 8 of this title.

#### CHANGE OF NAME

Act June 25, 1948, as amended by act May 24, 1949, substituted “court of appeals” for “circuit court of appeals” wherever appearing.

#### EFFECTIVE DATE

For effective date of section, see section 13 of act June 15, 1936, set out as an Effective Date of 1936 Amendment note under section 1 of this title.

### § 11. Vacation on request of designation as “contract market”; redesignation

Any board of trade that has been designated a contract market in the manner provided in this chapter may have such designation vacated and set aside by giving notice in writing to the Commission requesting that its designation as a contract market be vacated, which notice shall be served at least ninety days prior to the date named therein as the date when the vacation of designation shall take effect. Upon receipt of such notice the Commission shall forthwith order the vacation of the designation of such board of trade as a contract market, effective upon the day named in the notice, and shall forthwith send a copy of the notice and its order to all other contract markets. From and after the date upon which the vacation became effective the said board of trade can thereafter be designated again a contract market by making application to the Commission in the manner in this chapter provided for an original application.

(Sept. 21, 1922, ch. 369, §7, 42 Stat. 1002; Oct. 23, 1974, Pub. L. 93-463, title I, §103(a), (e), 88 Stat. 1392.)

#### AMENDMENTS

1974—Pub. L. 93-463 substituted “Commission” for “Secretary of Agriculture” and “its order” for “his order”.

#### EFFECTIVE DATE OF 1974 AMENDMENT

For effective date of amendment by Pub. L. 93-463, see section 418 of Pub. L. 93-463, set out as a note under section 2 of this title.

### § 12. Public disclosure

#### (a) Investigations respecting operations of boards of trade and others subject to this chapter; publication of results; restrictions; information received from foreign futures authorities; undercover operations

(1) For the efficient execution of the provisions of this chapter, and in order to provide information for the use of Congress, the Commission may make such investigations as it deems necessary to ascertain the facts regarding the operations of boards of trade and other persons subject to the provisions of this chapter. The Commission may publish from time to time the results of any such investigation and such general statistical information gathered therefrom as it deems of interest to the public: *Provided*, That except as otherwise specifically authorized in this chapter, the Commission may not publish data and information that would separately disclose the business transactions or market positions of any person and trade secrets or names of customers: *Provided further*, That the Commission may withhold from public disclosure any data or information concerning or obtained in connection with any pending investigation of any person. The Commission shall not be compelled to disclose any information or data obtained from a foreign futures authority if—

(A) the foreign futures authority has in good faith determined and represented to the Commission that disclosure of such information or data by that foreign futures authority would violate the laws applicable to that foreign futures authority; and

(B) the Commission obtains such information pursuant to—

(i) such procedure as the Commission may authorize for use in connection with the administration or enforcement of this chapter; or

(ii) a memorandum of understanding with that foreign futures authority;

except that nothing in this subsection shall prevent the Commission from disclosing publicly any information or data obtained by the Commission from a foreign futures authority when such disclosure is made in connection with a congressional proceeding, an administrative or judicial proceeding commenced by the United States or the Commission, in any receivership proceeding commenced involving a receiver appointed in a judicial proceeding by the United States or the Commission, or in any proceeding under title 11 in which the Commission has intervened or in which the Commission has the right to appear and be heard. Nothing in this subsection shall be construed to authorize the Commission to withhold information or data from Congress. For purposes of section 552 of title 5, this subsection shall be considered a statute described in subsection (b)(3)(B) of section 552.

(2) In conducting investigations authorized under this subsection or any other provision of this chapter, the Commission shall continue, as the Commission determines necessary, to request the assistance of and cooperate with the appropriate Federal agencies in the conduct of such investigations, including undercover oper-